Case Law of the Court of Justice of the European Union and the General Court

Squintani, Lorenzo

Published in:
Journal for European Environmental and Planning Law

DOI:
10.1163/18760104-01602006

BRILL
NIJHOFF

JOURNAL FOR EUROPEAN ENVIRONMENTAL &
PLANNING LAW 16 (2019) 191-197

JOURNAL FOR EUROPEAN ENVIRONMENTAL & PLANNING LAW
brill.com/jeep

Case Law Sections

Case Law of the Court of Justice of the European Union and the General Court

Reported Period 15.11.2018-13.02.2019

Lorenzo Squintani
University of Groningen
l.squintani@rug.nl

1 Overview of the Judgments[1]

1.1 *On the Concept of 'Emissions into the Environment' in the Context of the Right to Access to Information and the Marketing of Glyphosate*

Judgment of the General Court (Fourth Chamber) of 21 November 2018 in Case T-545/11 RENV – *Stichting Greenpeace Nederland and Pesticide Action Network Europe* (*PAN Europe*) *v European Commission*

1.2 *Subject Matter*

This case concerns an action for annulment against the Commission's refusal to grant access to information under Regulation (EC) No. 1049/2001 as regards several documents relating to the first authorisation of placing glyphosate on the market as an active substance. The General Court had annulled such decision in case T-545/11, but the Court of Justice had annulled the General Court's judgment in case C-673/13P, and sent the case back to the General Court for revision. In this judgment, the General Court followed the Court of Justice interpretation of the concept of 'emissions into the environment' and, after

1 Only judgements and orders available on Curia.eu under the subject matter 'environment' and 'provisions concerning the institutions/access to documents' have been included in this report.

reviewing all plea in law, rejected the request of annulment of the Commission's refusal.

1.3 *Judgment*

Dismisses the action

2 On the Criteria to Comply with EUR 6 Engine Standards for Air Quality

Judgment of the General Court (Ninth Chamber, Extended Composition) of 13 December 2018 in Joined Cases T-339/16, T-352/16 and T-391/16 – *Ville de Paris, Ville de Bruxelles and Ayuntamiento de Madrid v European Commission*

2.1 *Subject Matter*

This action for annulment launched by three municipalities from France, Belgium and Spain, aimed at invalidating Commission Regulation (EU) No. 2016/646 amending Regulation (EC) No. 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6). Following the well known Dieselgate, the testing requirements of diesel engines were changed. With Commission Regulation (EU) No. 2016/646, the results of the Real Driving Condition tests could be multiplied by a factor 1.5, and temporarily even 2.1, in order to establish compliance with the EU emission limits. The three municipalities bringing this action considered that by so doing the Commission actually changed the emission limits established by Regulation (EC) No. 692/2008, hence an essential element of this Regulation. Accordingly, they alleged that the Commission exceeded the regulatory powers granted to it by Regulation (EC) No. 692/2008. The General Court agreed with the plaintiffs (the judgment is not available in English).

2.2 *Key Findings*

121 S'agissant de la seconde question, la Commission soutient que, en ayant défini dans le règlement attaqué les valeurs NTE d'émissions d'oxydes d'azote à respecter lors des essais RDE par la détermination des facteurs de conformité CF polluant, elle n'a pas modifié les limites d'émissions d'oxydes d'azote fixées pour la norme Euro 6, figurant à l'annexe I du règlement nº 715/2007. Pour rappel, les facteurs de conformité CF polluant retenus dans le règlement attaqué pour les oxydes d'azote sont de 2,1, sur demande du constructeur automobile intéressé pour une période

transitoire s'achevant, selon les catégories de véhicules et la nature des actes demandés, entre le 31 décembre 2019 et le 31 décembre 2021, et, normalement, de 1,5. Utilisés en facteur multipliant les limites d'émissions Euro 6, ils permettent d'aboutir aux valeurs d'émissions NTE. En substance, la Commission argue que les limites d'émissions d'oxydes d'azote fixées dans la norme Euro 6 s'appliquent toujours non seulement pour les essais en laboratoire, mais qu'elles s'appliquent aussi désormais pour les essais RDE, les facteurs de conformité CF polluantn'étant que des éléments de correction statistique et technique.

123 Dans cette mesure, l'argument de la Commission selon lequel les limites d'émissions d'oxydes d'azote fixées dans la norme Euro 6 figurant à l'annexe I du règlement nº 715/2007 restent pleinement applicables pour les essais en laboratoires, même s'il est exact, n'est pas pertinent, puisque ces limites doivent aussi être respectées lors des essais RDE. Quant à l'argument selon lequel les essais en laboratoire seraient la « pierre angulaire » du contrôle des émissions polluantes des véhicules, mentionné au point 108 ci-dessus, il se heurte au fait que, précisément, les conditions de ces essais sont trop éloignées des conditions de conduite réelles pour qu'ils permettent d'assurer à eux seuls le respect des règles sur les émissions polluantes des véhicules édictées dans le règlement, ainsi que le laissait déjà entrevoir le considérant 15 de ce règlement et que l'indiquent explicitement les considérants 1, 2 et 4 du règlement 2016/427, qui a introduit les essais RDE dans la réglementation, tout comme les considérants 3 et 7 du règlement attaqué. Si les essais en laboratoire apportent des informations très détaillées et utiles sur le « comportement » des véhicules, en particulier depuis le remplacement des essais NEDC par les essais WLTP, ils ne cantonnent donc pas les essais RDE à un rang secondaire.

125 L'importance des essais RDE a d'ailleurs été renforcée depuis que la portée juridique de ces essais a été modifiée par le règlement attaqué aux termes duquel, ainsi que l'a exposé la Commission, à partir des dates d'application des valeurs NTE d'émissions d'oxydes d'azote qu'il définit, ces essais ne sont plus pratiqués à des seules « fins de surveillance », mais leurs résultats conditionnent la possibilité d'obtenir une réception par type et, par la suite, la possibilité d'immatriculer, de vendre, de mettre en service et de faire circuler sur route les véhicules concernés.

127 Dans ces conditions, la fixation par la Commission elle-même, au moyen de facteurs de conformité CF polluant, de valeurs NTE d'émissions

d'oxydes d'azote à ne pas dépasser lors des essais RDE, supérieures aux limites de ces émissions fixées pour la norme Euro 6 figurant à l'annexe I du règlement nº 715/2007, ne peut être admise en l'état du droit applicable.

129 Il y a lieu de souligner à cet égard que le système visant à faire intervenir un coefficient (le facteur de conformité CF polluant), multiplicateur des limites d'émissions d'oxydes d'azote fixées pour la norme Euro 6, conduit nécessairement à modifier cette norme elle-même, contrairement à un système prenant en compte les performances et les possibles erreurs des appareils de mesure en apportant des corrections aux mesures elles-mêmes, mais non aux limites qui doivent être respectées. En effet, si les marges d'erreur sur les mesures retenues restent dans des proportions suffisamment étroites, le second type de système permet de vérifier avec un degré de fiabilité raisonnable que les limites sont respectées.

132 Les moyens d'annulation des requérantes tirés de l'incompétence de la Commission doivent donc être accueillis, pour autant qu'ils visent les facteurs de conformité CF polluant retenus dans le règlement attaqué, dont découlent les valeurs NTE d'émissions d'oxydes d'azote.

3 On the Classification of the Substance 'DEHP' as Substance Subject to Authorisation under the REACH Regulation

Judgment of the Court (First Chamber) of 23 January 2019 in Case C-419/17 P – *Deza a.s. v European Chemicals Agency*

3.1 *Subject Matter*

This case concerns an appeal brought by Deza a.s. against the judgment of the General Court in case T-115/15, by which that Court dismissed the action for annulment of Decision ED/108/2014 of the European Chemicals Agency, updating and supplementing the existing entry of the chemical substance bis(2-ethylhexyl) phthalate ('DEHP') on the list of substances identified for eventual inclusion in Annex XIV to the REACH Regulation, i.e. the list of substances subject to authorisation. The Court of Justice agreed with the General Court and dismissed the appeal.

3.2 *Judgment*

Dismisses the appeal

4 On the Concept of 'Emissions' under the ETS Directive

Judgment of the Court (First Chamber) of 6 February 2019 in Case C-561/18 – *Solvay Chemicals GmbH v Bundesrepublik Deutschland*

4.1 *Subject Matter*

This request for a preliminary ruling concerns the validity of Article 49(1), second subparagraph, of Commission Regulation (EU) No. 601/2012 on the monitoring and reporting of greenhouse gas emissions pursuant to the ETS Directive and point 20 of Annex IV thereto. The request has been made in proceedings between Solvay Chemicals GmbH and the Federal Republic of Germany concerning the counting of carbon dioxide generated in a soda ash production installation and transferred to a precipitated calcium carbonate installation as emissions within the meaning of the ETS Directive. This case follows the one in *Schaefer Kalk* (C-460/15), about whose interpetation the Republic of Germany and Solvay Chimical had different views. The Court of Justice clarified that the latter party provided the correct interpreation.

4.2 *Key Findings*

33 Those provisions thus lead to the CO^2 transferred in such circumstances being regarded as falling under the definition of 'emissions' within the meaning of Article 3(b) of Directive 2003/87, despite not always being released into the atmosphere. By adopting the second subparagraph of Article 49(1) of Regulation No 601/2012 and point 20(B) of Annex IV to that regulation, the Commission therefore broadened the scope of that definition (see, to that effect, judgment of 19 January 2017, *Schaefer Kalk*, C-460/15, EU:C:2017:29, paragraph 40).

34 Consequently, it follows from that presumption that the operators concerned may not, in any circumstances, subtract the amount of CO^2 transferred for the production of PCC from the aggregate emissions of their installations for the production of soda ash, despite the fact that that CO^2 may not always be released into the atmosphere. An impossibility such as that means that the allowances must be surrendered for all of the CO^2 transferred for the production of PCC and may no longer be sold as excess, thus calling into question the allowance trading scheme in circumstances nevertheless consonant with the ultimate objective of Directive 2003/87, which seeks to protect the environment by means of a reduction of greenhouse gas emissions (see, by analogy, judgment of 19 January 2017, *Schaefer Kalk*, C-460/15, EU:C:2017:29, paragraph 41).

35 It follows from all the foregoing that the Commission, having altered an essential element of Directive 2003/87 in adopting the second subparagraph of Article 49(1) of Regulation No 601/2012 and point 20(B) of Annex IV thereto, overstepped the limits laid down in Article 14(1) of that directive (see, by analogy, judgment of 19 January 2017, *Schaefer Kalk*, C-460/15, EU:C:2017:29, paragraph 48).

36 Consequently, the answer to the questions referred is that the second subparagraph of Article 49(1) of Regulation No 601/2012 and point 20(B) of Annex IV to that regulation are invalid in so far as they systematically include the CO^2 transferred to another installation for the production of PCC in the emissions of the installation for production of soda ash, regardless of whether that CO^2 is released into the atmosphere.

5 Editor's Appraisal of the Reported Case Law

The reported period was a quiet one, with only four judgments. Still, it signed an important development in the field of air quality and vehicle emissions. Indeed, the General Court annulment of the Commission Regulation amending the Euro-6 Regulation will allow for a renewed discussion on the importance of clean engines and better air quality in the European Union. Dieselgate has been well reported in newspapers and academic literature.[2] The introduction of the improved tested methodologies, including the one under real driving conditions, was one important aspect of the response from the EU institutions to the concerns emerged from this scandal. Yet, the EU institutions had to balance conflicting interests, most notably those of citizens in the EU concerned for their health and those of the car manufacturers concerned with the profitability of their enterprises. The annulment of the Commission Regulation by the General Court in the *Ville de Paris and Others* case shows that, under the existing legal framework, such balancing can better be performed at the level of the Council and European Parliament that at the level of Comitology Procedure, which had been followed to establish the Commission Regulation. Allowing to trespass the emissions limit values by 150%, or even 210% on a temporary basis, during real driving conditions tests, can indeed hardly be considered a non-essential amendment to the standards set by the Council

2 E.g. N. de Sadeleer, *Harmonizing Car Emissions, Air Quality, and Fuel Quality Standards in the Wake of the VW Scandal. How to Square the Circle?*, in *European Journal of Risk Regulation*, (2016) 1–14.

and the European Parliament in this field. Of course, it remains to be seen how the Commission and the other EU institutions will react to this judgment.

Further, the *Solvay Chemicals* case shows the lasting difficulties that both EU and national institutions have with the interpretation of the legal regime regulating emissions from ETS installations. It is starting to be hard to follow all developments in this field. Accordingly, we very welcome Krämer's contribution providing an overview of the relevant cases decided by the EU Courts in the field of EU Climate Law.